

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY**

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**INTEROFFICE COMMUNICATION**

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**OPERATIONAL MEMO 111 - 16**

May 30, 1996 (corrected version)

**TO:** All Waste Management Division Supervisors

**FROM:** Jim Sygo, Chief, Waste Management Division

**SUBJECT:** Immediate Response Activities - Abandoned (Including Spilled) Wastes

This Operational Memorandum describes the responsibilities of a Governmental Emergency Response Agency (GERA) when conducting an immediate response to abandoned (including spilled) wastes. A GERA is any governmental agency involved in response activities in its political jurisdiction. An immediate response entails the GERA taking control of the waste as soon as practical after discovery and managing the waste on- or off-site.

Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.11101 et. seq., specifies the requirements for proper management of hazardous waste. One of these requirements is that a person who treats or stores hazardous waste have a construction permit or operating license issued pursuant to Part 111.

The GERA's actions do not require a construction permit or operating license under certain circumstances. R 299.9503(2) of the Part 111 Administrative Rules (Rule 503(2)) provides an exemption from the requirement if two conditions are met:

- 1 The person is engaged in treatment or containment, and
- 2 Treatment or containment occurs during an immediate response to any of the following specified events:
  - a A discharge of a hazardous waste;
  - b An imminent and substantial threat of the discharge of a hazardous waste;  
or
  - c A discharge of a material that, when discharged, becomes a hazardous waste.

Rule 503(2) applies as follows in the context of specific GERA activities:

### **ON-SITE MANAGEMENT**

Treatment or containment by the GERA on-site qualifies for the exemption of Rule 503(2) provided it is an immediate response. What qualifies as such is determined by the facts of each case. Relevant considerations are the environmental or health threats in question, practical considerations of accomplishing the necessary work, time between discovery of the threats and initiating response activities and the length of the response activities.

### **OFF-SITE MANAGEMENT**

GERAs may manage abandoned wastes off-site in one of two ways:

1. Transporting and storing it at a GERA owned or operated location until the waste is characterized or the GERA collects a quantity practical for disposal, or
2. Transporting it to and storing it at a site owned by another party (e.g., licensed disposal facility) pending proper characterization and disposal.

Neither of these responses would be subject to the Part 111 permitting or licensing requirement provided it meets the requirements of Rule 503(2). In this context, the relevant criteria would be whether the GERA's response was immediate and whether it entailed containment of the waste.

Immediacy is determined by the same considerations discussed under on-site management.

Containment, for purposes of immediate response, includes a broad range of activities necessary to properly characterize, transport and store the waste prior to proper disposal. Abandoned wastes present unique management problems. Since the precise nature of the waste material is often unknown, immediate disposal may be difficult or impossible without proper characterization. Immediate movement may be necessary in order to prevent or minimize public health and environmental threats. Temporary storage may be necessary pending characterization.

Accordingly, a series of actions by the GERA--as well as others directly involved in managing the waste for the GERA--may be considered containment of abandoned wastes within the meaning of Rule 503(2) provided they directly lead to safe and proper disposal of the wastes. The following discussion describes those steps in the process and what they should include to qualify for the exemption of Rule 503(2).

### **PRIOR TO MOVEMENT OFF-SITE**

1. The GERA should utilize all available information at the scene of the immediate response to determine the safe and appropriate management of the waste. This information should also be used in completing the required shipping documents. Available information includes anything on a container, such as a label, marking or product name, that would lead to a reasonable conclusion about the waste contained therein. If such information is not available at the scene and can be safely obtained, the minimum field evaluation prior to transport should include:
  - Applying knowledge gained from a visual examination. For example, solvent or paint waste should be handled as ignitable.
  - Testing pH, ignitability and reactivity through best available technology
2. The GERA must properly containerize the waste prior to shipment off-site. Packaging must meet U.S. Department of Transportation (U.S. DOT) requirements. The GERA should assess the condition and suitability of existing containers and, if necessary, use overpacks.

### **TRANSPORTATION**

1. Wastes should be transported from the site as soon as practical considering the nature and condition of wastes, threats to public health and the environment, and the ability to mobilize for transportation. Normally, this would be within ten calendar days.
2. The GERA must obtain an emergency site identification number, for the site of waste abandonment or spill, from the Michigan Department of Environmental Quality (MDEQ). During business hours the Waste Management Division, Manifest Unit Supervisor (517-373-1217) provides this number. After hours and on weekends and holidays, the Pollution Emergency Control Coordinator (800 292-4706) provides the number.
3. MDEQ and U.S. DOT require the Uniform Hazardous Waste Manifest (PR5110) (manifest) to be used as a shipping document. The GERA should be indicated as the generator and is responsible for ensuring that the manifest is completed accurately and completely. Contracted transporter and receiving facility information should also be on the manifest. In the "Special Handling Instruction and Additional Information" section (Item 15) of the manifest the GERA should place the words "Emergency Response" and list the specific site of abandonment. If the GERA knows either that the waste is hazardous or the U.S. DOT shipping description, that information should be used to complete the manifest. If there is

insufficient information to determine whether the waste is hazardous or to specify the U.S. DOT shipping description, shipping descriptions to be used are:

- FOR A LIQUID: RQ, Waste Environmentally Hazardous Substances Liquid, N.O.S. Class 9, UN3082, PGIII. In Item J of the manifest the waste number "029L" and in the "N/H" column "N" should be entered
  - FOR A SOLID: RQ, Waste Environmentally Hazardous Substances Solid, N.O.S. Class 9, UN3077, PG III. The waste number and the "N/H" column should be left blank.
4. The waste must be transported by a hazardous waste licensed transporter. However, less than 100 kilograms of liquid waste may also be transported to an appropriate receiving facility (see below) by a liquid industrial waste transporter or the GERA. Emergency movement of transportation related spills, if approved, may be managed in accordance with the provisions of R 299.9410(2) of the Part 111 Administrative Rules.

### **RECEIVING FACILITY OPTIONS**

The GERA must transport the waste to one of the following receiving facilities:

1. Less than 100 kilograms of waste, at each on-site location, may be managed at a designated facility (DF) which treats, stores or disposes of waste in compliance with applicable provisions of NREPA and implementing administrative rules. Applicable provisions include Part 31, Water Resources Protection; Part 55, Air Pollution Control; Part 111; Part 115, Solid Waste Management; and Part 121, Liquid Industrial Wastes.
2. Any quantity of waste may be managed at an interim or licensed Part 111 hazardous waste treatment, storage or disposal facility (TSDF) that has:
  - Approval to store a wide range of waste streams (including characteristic and listed waste codes),
  - Approval to store wastes prior to sending wastes for off-site management at another facility, and
  - Ability to store and segregate incompatible wastes.
3. Any quantity of waste may be managed at a GERA facility (GF) in accordance with all applicable Part 111 generator requirements.

### **RECEIVING FACILITY REQUIREMENTS**

1. A representative sample of the waste should be fingerprinted to determine initial storage compatibility and segregation. This includes pH, ignitability and reactivity. This should occur upon receipt and prior to placing the waste into final storage.
2. An additional representative sample must be sent for immediate analytical testing for final waste determination. Results should be available no later than 30 days from the date of waste receipt at the facility. The analytical testing must be in accordance with current SW-846 requirements. At a minimum, it must include pH, ignitability, reactivity, polychlorinated biphenyl, toxicity and any additional analysis to effect final disposal. Less than full analytical testing may be done if the waste is a conditionally exempt quantity of waste or is one (such as used oil) going for recycling.
3. The DF or TSDF may only distribute a copy of the manifest for the generator and the transporter before receiving the complete analytical testing results. The GF may only distribute a copy of the manifest to the transporter (if not self transported). After the full analytical results are received, the original manifest should be corrected and then properly distributed per the instructions. This includes the original generator and transporter manifest copies.

### **TERMINATION OF THE CONTAINMENT PHASE**

Once the complete analytical testing results are received, the waste can be properly characterized and the usual steps in management of the wastes become possible. As a result, the containment phase of the immediate response is terminated and the exemption provided by Rule 503(2) ends. At this point:

A DF or TSDF should complete the waste approval process within one working day of receiving the analytical results. The facility, in conjunction with the GERA, must then effect final treatment or disposal of the waste in compliance with the terms of their license and/or other controlling regulatory authority.

A GF must follow applicable generator requirements as determined by the quantity of waste. All containers of hazardous or unknown waste should be labeled immediately upon receipt at their site with the words hazardous waste, the start accumulation date, and the manifest number. A Small Quantity Generator has 180 days from date of characterization to effect final disposal. A Large Quantity Generator has 90 days.

Documentation of immediate response activities is to be maintained by the DF, TSDF or GF.

 **ACTING**